



# STATE OF UTAH

## UTAH SUBSTANCE ABUSE AND ANTI-VIOLENCE COORDINATING COUNCIL

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### *Meeting Notes* **USAAVDUI COMMITTEE**

**Tuesday, July 8**  
**10:00 am to 11:30 am**

**Room 129**  
**State Capitol Building**

*Present: David Beech, Bart Blackstock, Paul Boyden, Susan Burke, Lt. Col. Scott Duncan, Chief Wayne Hansen, Judge Michael Kwan, Lt. Ed Michaud, Lorenzo Miller, Teri Pectol, Mary Phillips, Rick Schwermer, Sheriff Kirk Smith, Nora Stephens, Norma Tabbish, Anna Kay Waddoups, Tasha Williams*

#### I. Welcome & Chair's Report

Anna Kay Waddoups

- Reaction to Local Alcohol Fund Letters

Anna Kay reported that some legislators were "offended" by the compliance letters that were sent out to local municipalities. Sen. Walker stated that it is important for legislators to receive this information to ensure that funds are being spent as the Legislature intended. It was suggested that next year legislators receive the entire compliance list so they have a better perspective of what is taking place statewide. The USAAV Council will determine what to do with the non-complying communities at their July 9 meeting.

#### II. Director's Report

Susan Burke

- Distribution of DUI Best Practices Manual

Photocopies of the manual were distributed as the manual was still at the printers. The manual will also be available on a CD with an instructional powerpoint presentation. The CCJJ website ([www.justice.utah.gov](http://www.justice.utah.gov)) will also have the manual and presentation available for download.

- Follow Up on DUI Checkpoints

Clarification on recent Utah Supreme Court rulings on Administrative Highway Checkpoints was provided. Checkpoints are permissible as long as they are narrowly focused and are related to keeping our roadways safe (*see handout*).

#### III. Potential DUI Legislation

- Code Clarification

Rick Schwermer

Revised language was presented to clarify the DUI code.

**Action:** Sen. Walker agreed to open a bill file, DUI Amendments. The clarifying language would then be run as a stand-alone bill or incorporated into other DUI legislation for the 2004 Legislative Session.

- Supplying Alcohol to Minors

Paul Boyden

No draft legislation has been prepared yet because it has been difficult to overcome the causation problem. Courts would have to show that the person supplying the alcohol to the minor then intended that minor to drive. Paul will continue to work with SWAP on how to address this issue. Currently, contributing alcohol to a minor is a Class A misdemeanor punishable by up to a year in jail. The

offender may be sued civilly under Utah's Dram Shop law, but there is little satisfaction in pursuing that avenue if the offender is "judgment proof", in other words, the offender has no assets.

Norma Tabbish and other committee member emphasized the importance of addressing this issue.

**Action:** *Paul will continue to work with SWAP on this issue. Members will forward any ideas or suggestions to him.*

- **Saliva Testing**

**Paul Boyden**

Paul reported that current law allows test instruments such as the saliva kits to be used to establish the probable cause that would allow a police officer to take a suspected DUI into custody. Rather than drafting legislation to clarify this process, an administrative policy developed and adopted by the Utah Department of Public Safety could address this issue.

**Action:** *Paul will work with DPS to determine if an administrative policy is all that is needed.*

#### IV. Agency Responses to DUI Council Recommendations

- **Administrative Office of the Courts**

**Rick Schwermer**

Rick reported that the Courts have been successful in identifying the data elements that are needed for DUI records and data is now being collected. They will have some numbers for the October Interim Report, which will allow the courts to compare how DUI's are handled across judicial districts. These data elements will need to be connected to the DUI Best Practices Manual. A 1 ½ day training on DUI was provided at the April 2003 Justice Court Judges conference.

The defendant-signed enhancement forms are being used in the Justice Courts now. Rick will make a presentation to the District Courts encouraging them to adopt the form.

The use of ignition interlock devices is still problematic for some parts of the state, particularly rural areas where the devices are not easily available. Because this is one area where data is being collected, the Courts will soon have a better understanding of how this sanction is used among the judicial districts.

Rick provided an outcome study of a New Mexico DUI Court that showed low recidivism rates for those completing the program. The primary concern for Utah is how plea in abeyance is handled.

The Department of Public Safety is now able to collect electronically the data. All municipal courts will be required to be online by February 2004. Rick estimated that 80 out of 130 courts are already online. The Courts are also working to make the CORIS (Court's database) system available for roadside access by local police jurisdictions.

All Justice Courts and District Courts will receive a copy of the DUI Best Practices Sentencing Manual. The manual will likely spur additional training.

- **Department of Public Safety**

**Lt. Col. Scott Duncan**

Col. Duncan reported that DUI enforcement is the number one priority for DPS. Utah has one of the lowest alcohol related crashes in the nation at approximately 16%. Lt. Ed Michaud explained how the department works with local agencies and businesses that serve liquor to ensure that establishments are following the law. Due to lack of time, the remainder of DPS' report was deferred.

**Action:** *DPS will complete their report at the August 12 meeting.*

#### V. Other Business: Plea in Abeyance

**Paul Boyden**

Paul reviewed draft legislation with the committee that would allow plea in abeyance to be counted toward an enhancement if the defendant committed a subsequent offense. The plea in abeyance would first need to be approved by the prosecutor. Offenders would also be required to successfully complete a treatment program.

#### VI. DUI Courts

**Judge Michael Kwan & Lorenzo Miller**

Judge Kwan, Taylorsville Justice Court, presented on the Substance Abuse Court that he runs. Offenders with drug or DUI related charge with no prior violent offenses are eligible to participate. They must first plead guilty, with their plea held in abeyance pending the successful completion of the all four levels of the court. The offender must pay for their treatment, supervision and testing costs,

but can receive credit toward their court costs. It takes 12-18 months for an offender to complete the program.

Lorenzo reported that the program's significance is not based on the offender achieving lifetime abstinence. Rather, the program's success has been based on the offender changing their behavior and becoming productive citizens again. Those who have completed the rigorous program have expressed pride in their accomplishment and a desire never to have to go through such a program again. The incentive for participating in the Court is the plea in abeyance. Lorenzo and Judge Kwan both emphasized the importance of changing current law so that pleas in abeyance can be considered for future enhancement purposes.

**Action:** *Sheriff Smith motioned that the Committee pursue drafting plea in abeyance legislation with Paul's assistance. Bart seconded the motion and it was passed unanimously. Paul will continue to work on the language. Susan will assist with the language related to the "treatment incentive" program reference.*

**Next Agenda and Meeting Schedule:**

August 12, 2003 1:30 pm to 3:00 pm

Driver License Division, Department of Public Safety and Law Enforcement to present

September 9, 2003 1:30 pm to 3:00 pm

Div. of Substance Abuse & Mental Health and Utah State Office of Education to present